

1 John Karl Buche (SBN 239477)
2 BUCHE & ASSOCIATES, P.C.
3 875 Prospect, Suite 305
4 La Jolla, California 92037
5 Telephone: 858.459.9111
6 Facsimile: 858.459.9120
7 jbuche@buchelaw.com

8 - and -
9

10 Dwayne L. Mason (*Pro Hac Vice*)
11 Shari L. Heyen (*Pro Hac Vice*)
12 GREENBERG TRAURIG, LLP
13 1000 Louisiana St., Suite 1700
14 Houston, Texas 7700292037
15 Telephone: 713.374.3500
16 Facsimile: 713.374.3505
17 masond@gtlaw.com
18 heyens@gtlaw.com

19 Attorneys for Defendant,
20 TOTAL VEIN SOLUTIONS, LLC

21 **UNITED STATES DISTRICT COURT**
22 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
23 **SAN FRANCISCO DIVISION**

24 TYCO HEALTHCARE GROUP LP d/b/a
25 VNUS MEDICAL TECHNOLOGIES,
26 Plaintiff/Counter-defendants,
27 v.
28 TOTAL VEIN SOLUTIONS, LLC, d/b/a
TOTAL VEIN SYSTEMS ,
Defendants/Counter-Plaintiffs.

Case No. C08-3129-MMC
(Consolidated Case No. C08-04234
MMC)

ORDER GRANTING
JOINT STIPULATED MOTION AND
~~**PROPOSED ORDER**~~**BY VNUS AND**
TVS FOR DISMISSAL OF TVS AND
PARTIAL VACATUR OF VERDICT
Judge: The Hon. Maxine M. Chesney

20 WHEREAS, Plaintiff Tyco Healthcare Group LP d/b/a VNUS Medical Technologies
21 (“VNUS”) and Defendant Total Vein Solutions, LLC (“TVS”) have entered into a Settlement
22 Agreement resolving, *inter alia*, all claims asserted by VNUS against TVS and all
23 counterclaims asserted by TVS against VNUS in the above-captioned action; and

24 WHEREAS the Settlement Agreement expressly contemplates the dismissal and
25 vacatur provided for herein, so that dismissal and vacatur will resolve all pending litigation
26 between VNUS and TVS, including those matters contained in the Settlement Agreement.

27 NOW THEREFORE, VNUS and TVS hereby jointly stipulate and respectfully move
28 the Court for a confirmatory order as follows:

- 1 1) The portions of the December 8, 2010 verdict (D.I. 441) corresponding
- 2 specifically to TVS (i.e., questions 4, 5, 6, 9a & 9b) are hereby VACATED
- 3 pursuant to Fed. R. Civ. P. 60(b). *See Thomas v. City of Tacoma*, 410 F.3d 644,
- 4 647 n.2 (9th Cir. 2005); *Click Entm't, Inc. v. JYP Entm't Co.*, 2009 WL
- 5 3030212, at *1 (D. Haw. 2009);
- 6 2) TVS is dismissed with prejudice from this action pursuant to Federal Rule of
- 7 Civil Procedure 41(a)(2);
- 8 3) The counterclaims asserted by TVS against VNUS are dismissed with prejudice
- 9 pursuant to Federal Rule of Civil Procedure 41(c);
- 10 4) Each party will bear its own fees, costs and expenses; and
- 11 5) The caption shall be amended in all subsequent pleadings to reflect this
- 12 dismissal.

13
14 *[Remainder of page intentionally left blank.]*

1 Dated: November 9, 2011

ATTORNEYS FOR DEFENDANT
TOTAL VEIN SOLUTIONS, LLC
d/b/a TOTAL VEIN SYSTEMS,

2 By: /s/ John K. Buche

3
4 John Karl Buche (SBN 239477)
5 BUCHE & ASSOCIATES, P.C.
6 875 Prospect, Suite 305
7 La Jolla, California 92037
Telephone: 858.459.9111
Facsimile: 858.459.9120
jbuche@buchelaw.com

8 - and -

9 Dwayne L. Mason (*Pro Hac Vice*)
10 Shari L. Heyen (*Pro Hac Vice*)
11 GREENBERG TRAURIG, LLP
12 1000 Louisiana St. Suite 1700
Houston, Texas 77002
713.374.3500/713.374.3505 (fax)
masondl@gtlaw.com
heyens@gtlaw.com

13
14 Dated: November 9, 2011

ATTORNEY FOR PLAINTIFF
TYCO HEALTHCARE GROUP LP d/b/a
VNUS MEDICAL TECHNOLOGIES

15 By: /s/ Matthew B. Lehr

16 Matthew B. Lehr (Bar No. 213139)
17 Diem-Suong T. Nguyen (Bar No. 237557)
18 DAVIS POLK & WARDWELL LLP
19 1600 El Camino Real
Menlo Park, CA 94025
650.752.2000/650.752.2111 (fax)

20
21 PURSUANT TO STIPULATION, IT IS SO ORDERED.

22
23 Dated: November 15, 2011

24
25
26
27
28 
THE HON. MAXINE M. CHESNEY
United States District Judge